



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 14 2009

Laurence S. Zakson, Esq.
Reich, Adell & Cvitan
3550 Wilshire Boulevard
Suite 2000
Los Angeles, California 90010

RE: MUR 6140
Committee to Re-Elect Loretta
Sanchez, and Kinde Durkee, in
her official capacity as treasurer

Dear Mr. Zakson:

On December 9, 2008, the Federal Election Commission notified your clients, the Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, in her official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by you, the Commission, on July 2, 2009, voted to dismiss this matter as to your clients, and has closed the file. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information. The Commission reminds your clients that they appear to have violated 2 U.S.C. § 439a(b). They should take steps to ensure that this activity does not occur in the future.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact J. Cameron Thurber, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script, reading "Susan L. Lebeaux".

Susan L. Lebeaux
Assistant General Counsel

Enclosure
Factual and Legal Analysis

cc: The Honorable Loretta Sanchez

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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5 **RESPONDENTS: Rep. Loretta Sanchez**

MUR: 6140

6 **Committee to Re-Elect Loretta Sanchez, and**
7 **Kinde Durkee, in her official capacity**
8 **as treasurer**

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10 **I. INTRODUCTION**

11 **This matter was generated by a complaint filed with the Federal Election Commission**
12 **("Commission") by Citizens for Responsibility and Ethics in Washington. See 2 U.S.C.**
13 **§ 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging**
14 **that Rep. Loretta Sanchez, and the Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, in**
15 **her official capacity as treasurer ("Sanchez Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and**
16 **11 C.F.R. § 113.1(g).**

17 **II. DISCUSSION**

18 **The complaint alleges that on August 30, 2007, the Sanchez Committee spent \$145.12 for**
19 **clothing items at Lua Dao for Rep. Sanchez's personal use, and on November 20, 2007, the**
20 **Sanchez Committee reimbursed Rep. Sanchez \$188.97 for "meeting clothing," as reflected in its**
21 **2007 Year End Report filed on July 11, 2008.**

22 **The Sanchez Committee responded that only \$145.12 was for clothing, and was a part of**
23 **the \$188.97 reimbursement listed in the Report; the \$145.12 appears on a separate memo entry**
24 **identifying the portion of the reimbursement used for clothing (another memo item directly**
25 **following the Lua Dao entry appears to be for expenses constituting most of the remainder of the**
26 **total reimbursement). The Sanchez Committee states that the clothing purchases were for two**
27 **traditional Vietnamese dresses used for Rep. Sanchez's official appearances as a Member of**

1 Congress and for campaign events. The Sanchez Committee's response further states that Rep.
2 Sanchez has one of the largest constituencies of Vietnamese-Americans in the country, and that it
3 would have been "inappropriate," "disrespectful[,] and culturally insensitive" to attend these
4 events in non-traditional/non-Vietnamese dress. Response at 2. The Sanchez Committee
5 contends that as Rep. Sanchez would not have bought the dresses to attend the events irrespective
6 of her duties as a Member of Congress and a candidate for federal office, the reimbursement was
7 legal. Nevertheless, Rep. Sanchez returned the amount to her committee in an effort to "avoid
8 incurring any further costs and expenses" over such a "small" amount. *Id.* at 3.

9 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
10 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
11 accepted by a candidate, and any other donation received by an individual as support for
12 activities of the individual as a holder of Federal office" The statute further states in sub-
13 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
14 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
15 person that would exist irrespective of the candidate's election campaign or individual's duties as
16 a holder of Federal office, including . . . (B) a clothing purchase" *See also* 11 C.F.R.
17 § 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
18 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
19 slogans, constitutes personal use).

20 Moreover, the Explanation and Justification for the regulation states that all but a *de*
21 *minimis* amount spent on clothing is *per se* personal use, and specifically supersedes Advisory
22 Opinion 1985-22 (Clay), which could be read to allow "specialized attire" to be worn at both
23 social and politically-related functions. Personal Use of Campaign Funds, 60 Fed. Reg. 7861,

1 7864-5 (Feb. 9, 1995). Therefore, the response from the Sanchez Committee indicating that the
2 clothing purchases would exist "irrespective" of Sanchez's election campaign or duties as a
3 holder of Federal office do not provide a valid defense under the circumstances presented. See
4 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g).¹

5 Rep. Sanchez used campaign funds from her authorized committee for clothing
6 purchases, which were of more than *de minimis* value, in violation of the prohibition on personal
7 use of campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). However, Rep. Sanchez
8 reimbursed the Sanchez Committee upon learning of the alleged violations. Moreover, the
9 alleged amount in violation is so low that it would not merit the further use of Commission
10 resources to pursue this matter. See Statement of Policy Regarding Commission Action in
11 Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16,
12 2007).

13 Therefore, the Commission has exercised its prosecutorial discretion and decided to
14 dismiss the complaint and close the file. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹ The Sanchez Committee maintains that under 11 C.F.R. § 113.1(g)(1)(i)(C), an "irrebuttable presumption" seems to be established that clothing can never meet the "irrespective test," and therefore the regulation "exceeds the scope of the statute." However, this argument is incorrect as the regulation provides a *de minimis* exception for items such as campaign t-shirts and caps with campaign slogans.